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In re Application of	:	
EVANS, Michael, et al.	:	
U.S. Application No.: 10/030,024	:	DECISION ON PETITION
PCT No.: PCT/GB00/02540	:	UNDER 37 CFR 1.47(a)
International Filing Date: 30 June 2000	:	
Priority Date: 01 July 1999	:	
Attorney's Docket No.: 60130-308	:	
For: LATCH ASSEMBLY	:	

This decision is issued in response to the "Petition Under Rule 37 CFR 1.47(a)" filed on 12 April 2002. Applicants have paid the required petition fee.

BACKGROUND

On 30 June 2000, applicants filed international application PCT/GB00/02540 which claimed a priority date of 01 July 1999 and which designated the United States. On 11 January 2001, a copy of the international application was communicated to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB").

On 30 January 2001, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of nineteen months from the priority date. As a result, the deadline for payment of the basic national fee was extended to expire thirty months from the priority date, i.e., 02 January 2002 (02 January 2002 was a federal holiday).

On 02 January 2002, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, a check in payment of the basic national fee.

On 06 March 2002, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 was required. The Notification also informed applicants that the failure to submit the declaration within two months of the date of the Notification would result in abandonment of the application.

On 12 April 2002, applicants filed the petition considered herein, with accompanying materials.

DISCUSSION

A grantable petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17; (2) a statement of the last known address of the non-signing inventor; (3) an oath or declaration by the other inventors on behalf of themselves and the non-signing inventor; and (4) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort. As discussed below, applicants here have failed to satisfy items (3) and (4).

Regarding the petition fee, applicants submitted a payment in the amount of \$130 with their petition. Item (1) is therefore satisfied.

The petition specifically sets forth the last known addresses of the nonsigning inventors, Mark Li and Michael Evans. Accordingly, item (2) is satisfied.

Regarding item (3), section 409.03(a) of the Manual of Patent Examining Procedure ("MPEP") states that:

An oath or declaration signed by all the available joint inventors with the signature block of the nonsigning inventor(s) left blank may be treated as having been signed by all the available joint inventors on behalf of the nonsigning inventor(s), unless otherwise indicated.

Applicants here have filed what appears to be a compilation of two declarations, one complete four-page declaration executed by co-inventor James Frost and containing unsigned signature blocks for the remaining inventors (including the two nonsigning inventors), and a copy of page three of the declaration, executed by co-inventor Nigel Spurr, which has been inserted into the complete declaration. Pursuant to the MPEP, the complete declarations executed by co-inventors Frost and Spurr and containing the unsigned signature blocks for the nonsigning inventors, not a compilation of the two (see MPEP section 602) are required. Until the two complete declarations are submitted (or one complete declaration executed by both signing inventors), item (3) is not satisfied.

Regarding item (4), applicants assert that Mr. Li has refused to execute the application and that Mr. Evans cannot be located after diligent effort.

With respect to Mr. Li, before a refusal to execute the application can be claimed, MPEP § 409.03(d) requires that the nonsigning inventor be provided with a copy of the complete application. The MPEP also requires "a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made." Here, the declaration of Mr. John Jones attached to the petition provides the required first-hand evidence that a copy of the application was presented to Mr. Li, and that Mr. Li has refused to execute the application. Item (4) is therefore satisfied with respect to Mr. Li.

With respect to Mr. Evans, the proof required to show that a nonsigning inventor cannot be reached after diligent effort is set forth in section 409.03(d) of the MPEP, which states:

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, an affidavit or declaration of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made. ...

The affidavit or declaration of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as certified mail return receipt, cover letter of instructions, telegrams, etc., that support a finding that the nonsigning inventor could not be found or reached should be made part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.

Here, the attempts to contact the nonsigning inventor are set forth in Mr. Jones' declaration, and the attachments thereto. Mr. Jones provides firsthand evidence that two mailings were made to Mr. Evans' last known address and that no response was received. However, no evidence is provided of any additional efforts made to locate Mr. Evans (i.e., telephone calls, efforts to determine Mr. Evans' new address, ...). The two mailings described here to Mr. Evans' last known address do not constitute the "diligent effort" required to satisfy item (4) above. Accordingly, until proper evidence of further efforts to locate or contact Mr. Evans are provided, item (4) is not satisfied with respect to this nonsigning inventor.

Based on the foregoing, applicants have failed to satisfy all the requirements for a grantable petition under 37 CFR 1.47(a). Accordingly, the petition must be dismissed.

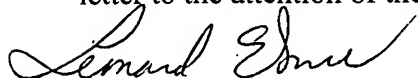
CONCLUSION

The petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)" and should include complete copies of the declarations executed by the two signing inventors (and containing unsigned signature boxes for the nonsigning inventors), and evidence of further efforts made to contact nonsigning inventor Michael Evans, as discussed above and in the form required by MPEP § 409.03(d). No additional petition fee is required.

Failure to file a timely response will result in abandonment of the application.

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the International Division, Legal Staff.



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